

CHAPTER NO. 605

SENATE BILL NO. 3458

By Crutchfield, Williams

Substituted for: House Bill No. 3537

By McMillan, Pinion

AN ACT to amend Tennessee Code Annotated, Title 54, Chapter 5, Part 1, relative to retainage.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 54-5-121, is amended by deleting such section in its entirety.

SECTION 2. Tennessee Code Annotated, Section 54-5-122, is amended by deleting such section in its entirety and by substituting instead the following:

Section 54-5-122. (a) The department may close a project after the following has occurred:

(1) The department shall provide thirty (30) days notice in some newspaper published in the county where the work is done, if there is a newspaper published there, and if not, in a newspaper in an adjoining county, that final settlement is about to be made and notifying all claimants to file notice of their claims with the department and the contractor's surety. The period for filing a notice of claim shall not be less than thirty (30) days after the last published notice. No notice of claim shall be valid unless it is verified by oath and filed after the publication of the first notice; and

(2) The contractor shall furnish evidence to satisfy the department that all the material used by the contractor, its subcontractors or its agents has been fully paid for and all laborers and other employees working for the contractor, its subcontractors or its agents have been fully paid.

SECTION 3. Tennessee Code Annotated, Section 54-5-123, is amended by deleting subsection (a) in its entirety and by substituting instead the following:

(a) From the three-and-one-half percent (3 1/2%) retained on any contract executed prior to August, 2005, that is being closed and to the extent such funds are due the contractor, the department shall withhold from the contractor a sum sufficient to pay all claims, of which notice is appropriately filed with the department, for a period of sixty (60) days from the date of the last advertising, to allow claimants to sue and prove their claims against the contractor or its agent, in some court of competent jurisdiction. In the event a civil action is brought against the contractor by any claimant within sixty (60) days from the day of the last advertising, the department shall pay the amount of the claim into court from any funds of the contractor the department is holding, if any. But in all cases where civil actions are not brought within sixty (60) days, the department shall pay any sums being held by the department, if any, to the contractor. No civil action

shall be valid unless it is filed after the filing of a notice of claim with the department in accordance with Section 54-5-122.

SECTION 4. Tennessee Code Annotated, Subsection 54-5-124(a), is amended by adding the following sentence at the end of thereto:

In the event that the department is not holding sums due a contractor described in Section 54-5-123(a) or upon payment of the amount specified in subsection (b), upon request by the commissioner the commissioner shall be dismissed as a party.

SECTION 5. Tennessee Code Annotated, Section 54-5-124 is amended by deleting subsection (b) in its entirety and substituting instead the following:

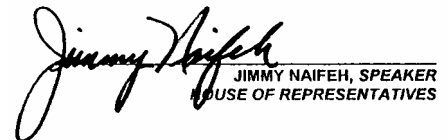
(b) When a civil action has been properly brought, in the event the department is holding any amount due a contractor described in Section 54-5-123(a), such amount or the amount of the claim, whichever is less, shall be paid into court.

SECTION 6. Tennessee Code Annotated, Section 54-5-138, is amended by deleting subsection (c) in its entirety.

SECTION 7. This act shall take effect August 1, 2005, the public welfare requiring it.

PASSED: April 21, 2004


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 5th day of May 2004


PHIL BREDESEN, GOVERNOR